

Response to Office Action mailed 9/17/2004  
Serial No. 10/042,955

Atty Dkt. No. 113937-002

### REMARKS

This Amendment is being filed in response to the Office Action mailed on September 17, 2004. Applicants respectfully request reconsideration and allowance of the pending claims in the present application in view of the foregoing amendments and remarks below.

The Examiner has rejected claims 3, 4, 5, 10, 11 and 25. Applicants have amended these claims in accordance with the Examiner's suggestions and respectfully request a withdrawal of these rejections.

The Examiner has also made six separate rejections of the pending claims under 35 U.S.C. §103(a) in paragraphs 14-19 of the Office Action. Each of these rejections require *Mallik* (U.S. Patent No. 6,533,884) as a part of the rejection. Because *Mallik* issued after the filing date of this application on March 18, 2003, and was filed on November 3, 2000, it is prior art under 35 U.S.C. §102(e). Applicants submit herewith a Declaration under 37 C.F.R. 1.131 by joint inventor Brent Anderson averring that he conceived the claimed invention prior to November 3, 2000, and worked on this matter diligently thereafter. Accordingly, *Mallik* should be excluded as a reference by virtue of this Declaration. Further, the Examiner cannot rely on *Mallik* in any combination, and, therefore, Applicants respectfully request a withdrawal of the six rejections requiring *Mallik*.

### **Conclusion**

In view of the foregoing, Applicants submit the claims are in condition for allowance and respectfully request an early notice of the same.

Respectfully submitted,

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Date: October 20, 2004

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